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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,772	10/01/2003	Daniel J. Swistak	2313	9121
42638	7590	10/01/2007		
THE LAW OFFICES OF STEVEN MCHUGH, LLC 46 WASHINGTON STREET MIDDLETOWN, CT 06457			EXAMINER MAYO, TARA L	
			ART UNIT	PAPER NUMBER
			3671	
			MAIL DATE	DELIVERY MODE
			10/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/677,772

Applicant(s)

SWISTAK ET AL.

Examiner

Tara L. Mayo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application |
| 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20061218,20070628,20070725</u> . | 6) ☐ Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 June 2007 has been entered.

Response to Amendment

2. In an effort to advance prosecution, the Examiner has considered both declarations of 28 June 2007 as being filed under 37 CFR §1.132.

3. The Declarations under 37 CFR 1.132 filed 28 June 2007 are insufficient to overcome the rejection of claims 21 through 34 based upon DiTullio (U.S. Patent No. 6,854,925 B2), Kothmann (U.S. Patent No. 5,046,892) and Nichols et al. (U.S. Patent No. 4,759,661) as set forth in the last Office action because: The Declarant fails to address Kothmann '892 in both declarations. Specifically, Kothmann '892 is relied upon for a teaching of inwardly flaring sidewalls and supplies motivation for modifying DiTullio '925 to include the same. Any discussion of patentability requires consideration of Kothmann '892.

Claim Objections

4. Claim 26 is objected to because of the following informalities: claim drafting errors.

In claim 26 on line 3, delete “to” (first occurrence). Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 24, 25, 28 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 24, the scope of the claimed invention is rendered indefinite by the recitation of “wherein the slope of the basic axes of the slots is about 12 degrees.” Specifically, Applicant does not provide antecedent basis for slots having the same slope. Claims 25, 28 and 32 are similarly rejected.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 21 through 25 and 29 through 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiTullio (U.S. Patent No. 6,854,925 B2) in view of Kothmann (U.S. Patent No. 5,046,892) and Nichols et al. (U.S. Patent No. 4,759,661).

DiTullio '925, as seen in Figure 2, shows:

with regard to claims 21 and 29,

an arch shape cross section leaching chamber (12) having an inwardly sloped and upwardly curving sidewall running from a horizontal base to an imperforated top; the sidewall having a multiplicity of slots (30) spaced apart and running lengthwise along the chamber (col. 4, lines 39 through 41), wherein the slots have a height.

DiTullio '925 fails to teach:

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with regard to claims 21 and 29,

the slots having an inward flare;

the slots having a horizontal opening dimension greater than the vertical opening dimension; and

the slots having a downwardly sloped axis; and

with regard to claims 22, 30 and 33,

the included angle of flare being between 2 and about 12 degrees;

with regard to claims 23, 31 and 33,

the slot height measured at the interior of the chamber being in the range of about 0.105 inch to about 0.200 inch;

with regard to claims 24, 25, 32 and 33,

the slope of the basic axes of the slots being about 12 degrees as measured from the horizontal.

Kothmann '892, as seen in Figures 1 and 3, discloses an apertured pipe segment (10) having tapered slots (12) made by an injection molding process for forming smooth pipe walls which are less likely to become clogged (col. 1, lines 40 through 44; col. 1, lines 62 through 66; col. 2, lines 24 through 29; col. 3, lines 47 through 51; and col. 4, lines 3 through 8), wherein the slots comprise slot walls which diverge from the outside of the pipe segment inwardly thereby precluding large sized soil particles from entering the interior of the pipe segment (col. 4, lines 20 through 21).

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Nichols et al. '661, as seen in Figures 1, 3, 7 and 9, show a leaching chamber device (20) comprising a plurality of downwardly sloped slots (26) for preventing fine soil particles from infiltrating the interior of the device (col. 4, lines 44 through 47), wherein the slope of the slots is about 20° (col. 6, lines 31 through 32), wherein the height (h_1) of the slots measured at the interior of the chamber is about 0.25 inch. The slots of the device taught by Nichols et al. '661 have a horizontal opening dimension greater than the vertical opening dimension.

With regard to claims 21, 29 and 34, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to modify the device shown by DiTullio '925 such that the perforations would flare inwardly in view of the advantages taught by Kothmann '892. The motivation would have been to preclude clogging of the perforations by large sized soil particles.

With regard to claims 21, 29 and 34, it would have been obvious to one having ordinary skill in the art at the time of invention to make the slots of the device shown by DiTullio '925 such that they would have a horizontal opening dimension greater than the vertical opening dimension as taught by Nichols et al. '661 since the same would result in an increase in the rate of flow passing through the chamber walls.

With regard to claims 21, 29, 32 and 34, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to modify the device shown by DiTullio '925 such that the basic axes of the perforations would slope downwardly from the inside to the outside of the chamber sidewall as taught by

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Nichols et al. '661. The motivation would have been to direct the effluent downwardly as it exits the interior of the chamber.

With regard to claims 22, 24, 25, 30 and 33, in view of the teachings of Nichols et al. '661 (col. 6, lines 31 through 32) in combination with DiTullio '925 and Kothmann '892, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the included angle of flare between 2 and about 12 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claims 23 and 31, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to modify the device taught by the combination of DiTullio '925 and Kothmann '892 such that slot heights would be in the range of 0.105 inch to about 0.200 inch since Nichols et al. '661 expressly teaches a height of about 0.25 inch. The motivation would have been to effect a desired rate of discharge from the chamber.

10. Claims 26 through 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiTullio (U.S. Patent No. 6,854,925 B2) in view of Kothmann (U.S. Patent No. 5,046,892), Nichols et al. (U.S. Patent No. 4,759,661) and Schlafly (U.S. Patent No. 980,442).

To avoid redundancy, the Examiner has applied the prior art substantially the same as set forth in the rejection of claim 21 above. See section 8.

DiTullio '925, as seen in Figure 2, further teaches:

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with regard to claims 26 and 27,

an outwardly extending base flange (28).

DiTullio '925 fails to teach:

with regard to claims 26 and 27,

the base flange having an upwardly extending lengthwise fin, the extension of the basic axes of at least some of said multiplicity of slots intersecting the fin; and

the slots having a horizontal opening dimension greater than the vertical opening dimension.

Schlaflly '442 shows a culvert comprising a base flange (4) with an upwardly extending lengthwise fin (2) for retaining water.

With regard to claim 26, it would have been obvious to one having ordinary skill in the art at the time of invention to make the slots of the device shown by DiTullio '925 such that they would have a horizontal opening dimension greater than the vertical opening dimension as taught by Nichols et al. '661 since the same would result in an increase in the rate of flow passing through the chamber walls.

With regard to claims 26 and 27, it would have been obvious to one having ordinary skill in the art of drainage at the time the invention was made to further modify the device taught by the combination of DiTullio '925, Kothmann '892 and Nichols et al. '661 such that the flange of the chamber would have an upwardly extending fin as taught by Schlaflly '442 and the extended axes of some of the perforations would intersect the

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fin. The motivation would have been to facilitate anchoring of the device and to provide additional means for controlling and retaining effluent as desired.

With regard to the recitation of a “molded” leaching chamber in claim 26, the method of forming the device is not germane to the issue of the patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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TARA LMAYO
PRIMARY EXAMINER
Art Unit 3671

tlm

17 September 2007